Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2004

Jose V. Sanchez,

Petitioner,

vs.

Minson Corporation, et. al.,

Respondent.

ON PETITION FOR A WRIT OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF *CERTIORARI*

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Petitioner in *pro se*

QUESTIONS PRESENTED

1. Whether Petitioner properly served the summons and complaint?

2. Whether the United States district court properly dismissed the complaint?

PARTIES TO THE PROCEEDING

Petitioner Jose V. Sanchez was the Plaintiff in the United States district court and the Appellant in the United States court of appeals.

Respondent in this court is Minson Corporation et. al.

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ON PETITION FOR A WRIT OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF *CERTIORARI*

Petitioner respectfully prays that a writ of *certiorari* issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished. The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The United States court of appeals dismissed my case on April 26, 2004. No petition for rehearing was timely filed in my case.

The pertinent part of the Constitution of the United States provides "[w]e the People of the United States, in Order to establish justice, do ordain and establish this Constitution for the United States." The Federalist Papers, Federalist Number, 51 Section 1 of Article III provides in presently pertinent part that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Warth v. Seldin, 422 U.S. 490, 498-99 (1975) And Section 2 of the Article provides among other things "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution [and] the Laws of the United States." Osborn v. United States Bank, 22 U.S. 738, 819 (1824); Old Colony Tr. Co., v. Commrint Rev., 279 U.S. 716, 724 (1929) Section 1254, Title 28, United States Code provides "[c]ases in the courts of appeals may be reviewed by the Supreme Court by the following methods." And Subsection (1) of the Section provides "[b]y writ of certiorari granted upon the petition of any party to any case, after rendition of judgment or decree." Superior Court of

State of California v. United States District Court, 256 F.2d 844, 847 (1958)

CONSTITUIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent parts of the Bill of Rights is "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (14th Amendment to the Bill of Rights)

The essential elements of due process of law are notice, an opportunity to be heard, and the right to defend in an orderly proceeding." *Fiehe v. R.E. Householder Co.,* 125 So. 2, 7 (Fla. 1929).

"To dispense with notice before taking property is likened to obtaining judgement without the defendant having ever been summoned." *Mayor of Baltimore vs. Scharf,* 54 Md. 499, 519 (1880).

"An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. *Kazubowski v. Kazubowski,* 45 Ill.2d 405, 259, N.E.2d 282, 290." Black's Law Dictionary, 6th Edition, page 500.

"Due Process of law implies and comprehends the administration of laws equally applicable to all under established rules which do not violate fundamental principles of private rights, and in a competent tribunal possessing jurisdiction of the cause and proceeding upon justice. It is founded upon the basic principle that every man shall have his day in court, and the benefit of the general law which proceeds only upon notice and which hears and considers before judgement is rendered." *State v. Green,* 232 S.W.2d 897, 903 (Mo. 1950).

"Phrase means that no person shall be deprived of life, liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing, *Pettit v. Penn.,* La.App., 180 So.2d 66, 69." Black's Law Dictionary, 6th Edition, page 500.

"Due Process of law implies the right of the person affected thereby to be present before the tribunal which

pronounces judgement upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law." Black's Law Dictionary, 6th Edition, page 500.

"Aside from all else, 'due process' means fundamental fairness and substantial justice. *Vaughn v. State,* 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883." Black's Law Dictionary, 6th Edition, page 500.

'The law of the land,' as used in the constitution, has long had an interpretation, which is well understood and practically adhered to. It does not mean an Act of the Legislature; if such was the true interpretation, this branch of the government could at any time take away life, liberty, property and privilege, without a trial by jury." *Saco v. Wentworth,* 37 Maine 165, 171 (1852).

The provision [due process clause] is designed to exclude oppression and arbitrary power from every branch of government." *Dupuy v. Tedora*, 15 So.2d 886, 890, 204 La. 560 (1943).

STATEMENT OF THE CASE

From August 1996 through July 2001, Plaintiff worked for Defendant in the Welding Department.

Throughout that time, Plaintiff was a victim of severe age and racial discrimination, nepotism, unequal distribution of hours and overtime, unjust pay and eventually wrongful termination.

Plaintiff is Columbian and was 58 years old at the time he was hired by Defendant. Plaintiff was 62 when he was laid off.

The majority of the employees in the Welding Department where Plaintiff worked and in the entire company, were Mexican. The Supervisor, Jacobo Lujan, was one of those. Many family members of Mr. Lujan worked for the company, had better hours, better wages, and more overtime than Plaintiff, in spite of the fact that Plaintiff had attended school and earned certificates in welding and machinery and many of the other employees had less experience and no schooling or certificates. Mr. Lujan and his family constantly and consistently harassed, humiliated, insulted, Plaintiff due to his nationality and age in violation of *Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967*. They degraded him and defamed him by calling him names such as "stupid old man", "incompetent old man", etc. Mr. Lujan as a Supervisor and authority figure in the company both participated in and authorized, sanctioned, condoned, and otherwise permitted such behavior toward Plaintiff, with no

regard or thought for Plaintiff's civil rights, employment rights, etc. Defendant was aware of, and therefore, in effect, also authorized, sanctioned, condoned and otherwise permitted this behavior to continue for five years, at which time, Plaintiff was laid off unjustly. No explanation was ever provided Plaintiff in regards to his lower wages, the harassment he was subjected to or the discrimination. No discipline was given to either Mr. Lujan or his family members, nor were his family members subject to the same lay off as Plaintiff.

In approximately the beginning of 2002, Plaintiff filed a formal complaint with the EEOC for labor violations, discrimination, racism, and other similar and related complaints. The complaint with the EEOC eventually brought an offer from the Defendant for 200 to 300 days of pay.

On August 5, 2002, Plaintiff filed a complaint with the United States District Court, Western Division for Discrimination, pursuant to Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967. Throughout this action, Plaintiff remained in Pro Per. Defendant attempted to discredit Plaintiff and to cover up the multiple discrimination and labor violations which Plaintiff suffered while working for Defendant. Defendant, in their attempt to cover up the major issues of the case, alleged that

they were never properly served. However, Plaintiff in an attempt to represent himself in this matter, did manage to complete service on the last day allowed him by the court.

While it is true that Plaintiff was delayed in being able to properly serve the Defendant, the United States District Court ignored Plaintiff's documentation and arguments. The Defendant, in it's own declarations, state that Plaintiff had in fact served them, "To properly serve defendants, plaintiff may have copies of the summons and complaint personally delivered to defendants (Cal Code of Civ Proc § 415.10), or alternatively, may have copies of the summons and complaint left at defendants' place of business with the person who is apparently in charge thereof, as is required by California Code of Civil Procedure § 415.20(a)". On March 7, 2003, Plaintiff caused to have served on Defendant the Summons and Complaint, and said service was completed by personally delivering the documents to Defendant's office and serving Melissa Davila (Wallach Decl. ¶ 3, ER p. 26; 3/7/03 Proof of Service, ER p. 21). Additionally, numerous copies of the Summons and Complaint were certified mailed to Defendants, none of which were returned to Plaintiff.

REASONS FOR GRANTING PETITION

I. The United States court of appeals decision is arbitrary, capricious, conscious-shocking, oppressive and inconsistent with the constitutional provision of "due process of law" of the Fifth Amendment of the Constitution of the United States and thus warrants an exercise of this court's supervisory power forthwith and without delay, in the furtherance of substantial justice.*

The United States District court and the United States Court of Appeals discriminated against Plaintiff and totally and completely ignored both his statements and arguments in defense of the correct service of process, but also ignored the contradictions in Defendant's own paperwork, wherein Defendant admitted that they had been served, and clearly they have been served and have also responded in a manner as to cover up the main issues of the case

which are age and race discrimination, labor violations, and unjust and wrongful termination.

CONCLUSION

From the beginning, with the EEOC complaint, Defendant offered to compensate Plaintiff with 200 to 300 days pay, however, this was an attempt to prevent Plaintiff from taking the complaints to a higher level and obtaining true justice. Subsequently, in the District court, Defendant has attempted to discredit Plaintiff and to avoid having the full issues of Plaintiff's case deliberated in a Court of law by contradicting themselves in their own declarations. Plaintiff, although through a delay, managed to properly serve Defendant on the last possible day, a fact which even Defendant admitted. However, both the District Court and the Court of Appeals ignored both Plaintiff's proofs and arguments, but also the contradiction blatantly apparent in Defendant's own declaration.

Respectfully submitted,

Dated:

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Jose V. Sanchez
Petitioner in *pro se*